

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY

JUAN HERNANDEZ DOMINGUEZ,

Petitioner,

v.

CRIMINAL ACTION NO. 5:01-0027-1  
CIVIL ACTION NO. 5:06-0424

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION

On May 30, 2006, petitioner filed a motion under 28 U.S.C. § 2255 contending that a term of incarceration that was imposed upon him on August 28, 2001, was unconstitutional. (See Doc. No. 85.)<sup>1</sup> 28 U.S.C. § 1915A(a) directs courts to review complaints filed by prisoners against the government "before docketing, if feasible or . . . as soon as practicable after docketing" to ascertain whether they contain valid claims. Section 1915A(b)(1) directs the court to dismiss any complaint, or portions of any complaint, which contain claims that are "frivolous, malicious, or fail[] to state a claim upon which relief may be granted." Id.

A search of the records of the Bureau of Prisons indicates that petitioner has been released as of the date of this opinion.

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<sup>1</sup> By Standing Order, this case was initially referred to a magistrate judge for preparation of proposed findings and recommendation as to disposition. (Doc. No. 89.) To expedite this case's disposition, the court hereby **VACATES** the Standing Order, only as applied to this case.

Petitioner's case must fail because he has been released from prison. As such, the court finds that petitioner's claims seeking release from prison are moot, and must be dismissed pursuant to 28 U.S.C. § 1915A(b)(1). See Spencer v. Kemna, 523 U.S. 1, 7 (1998) (holding that a "collateral consequence" of conviction must exist after a prisoner's release in order for him to continue to maintain a challenge to his confinement). A Judgment Order effectuating the court's finding has been issued contemporaneously with this opinion.

The Clerk is directed to send copies of this Memorandum Opinion to Magistrate Judge R. Clarke VanDervort, counsel of record, and the petitioner, pro se.

It is **SO ORDERED** this 28th day of February, 2007.

ENTER:

A handwritten signature in dark ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber  
Chief Judge